

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LIFEWATCH SERVICES, INC., and
CARD GUARD SCIENTIFIC SURVIVAL, LTD.

Plaintiffs,

v.

BRAEMAR, INC. AND
ECARDIO DIAGNOSTICS, LLC,

Defendants.

Civil Action No. 09-CV-6001

**JOINT MOTION TO DISMISS THE CLAIMS
AND COUNTERCLAIMS CONCERNING THE '878 PATENT**

The parties to this lawsuit, Plaintiffs LifeWatch Services, Inc. and Card Guard Scientific Survival, Ltd. (collectively "Plaintiffs"), and Defendants Braemar, Inc. and eCardio Diagnostics, LLC (collectively "Defendants"), hereby jointly move the Court to enter the relief set forth below concerning the claims and counterclaims that relate, in whole or in part, to one of the patents-in-suit, U.S. Patent No. 7,542,878 ("the '878 Patent"):

1. The claims brought by Plaintiffs alleging infringement of the '878 Patent against Defendants, as set forth in Plaintiff's Complaint (Docket No. 1), are hereby dismissed with prejudice from the case, except that Plaintiffs expressly reserve their rights to pursue any claims with respect to the '878 Patent for any products other than the accused products identified in the Complaint, including but not limited to future versions of such products to the extent that such future versions are materially different than the versions that existed as of the date of this motion.

2. The counterclaims brought by Defendants against Plaintiffs seeking declaratory

judgment of non-infringement and patent invalidity relating to the '878 Patent, as set forth in Defendant Braemar's Answer and Counterclaims (Docket No. 36) and Defendant eCardio's Answer and Counterclaims (Docket No. 37), are hereby dismissed with prejudice from the case, except that the declaratory judgment counterclaims with respect to invalidity of the '878 Patent as to any products other than the accused products in this action are dismissed without prejudice. Further, Defendants are not precluded from asserting any of its claims in the form of a counterclaim to an asserted claim against one or more of Defendants alleging infringement pertaining to the '878 Patent.

3. Each party shall bear its own costs, expenses and attorneys' fees in connection with the dismissed claims and counterclaims set forth in paragraphs 1 and 2 above.

All claims and counterclaims of the parties relating to U.S. Patent No. 5,730,143 remain at issue in the case.

REQUEST FOR RELIEF

WHEREFORE, the parties respectfully request that the Court enter an order granting the relief requested above.

Dated: July 1, 2010

/s/ Jeremy P. Oczek

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system on this 1st day of July, 2010.

/s/ Jeremy P. Occek

Jeremy P. Occek